

1 A Yeah. What I remember is, during
2 the negotiations I think it was in the second
3 conference call, with Comcast, that with
4 respect to the 600,000 subscribers that -- and
5 I think it actually turned out to be like 640-
6 but I'm not sure right now, that Comcast
7 wanted the right to delay the launch of
8 approximately 150,000 of those.

9 Q Correct. And let's go back to the
10 second paragraph on the first page.

11 A Okay.

12 Q The last sentence in that
13 paragraph, or actually the second to the last
14 paragraph, reads, any other Comcast systems
15 within the MASN territory may carry the
16 service within Comcast's discretion, right?

17 A Yes, that's what it says.

18 Q Okay, and how did you interpret
19 that sentence?

20 A Like I stated before, Mr. Gluck
21 called me and told me that Comcast requested
22 to strike the word, all, and replace it with

1 this language. And he said that the reason
2 they wanted to do that was to acknowledge that
3 they were not going to be launching
4 specifically these Adelphia systems that were
5 comprising approximately 150,000 subscribers
6 that were on low bandwidth systems.

7 That was my understanding of why
8 that language is in this term sheet.

9 Q Do you see that reflected anywhere
10 in this term sheet? Do you see anything
11 carving this provision out only for Adelphia
12 markets?

13 A No, I think when we went over that
14 before I did not find anything in the term
15 sheet that specifically says that. But it was
16 my understanding and our understanding and
17 what we bargained for; that's why this
18 language was put in here.

19 Q Then why doesn't it say that
20 Comcast must launch Adelphia markets when they
21 have been let's say rehabilitated?

22 A It was our understanding when we

1 were doing the negotiations that Comcast
2 wasn't exactly sure where these Adelphia
3 systems were actually located because they had
4 just recently acquired them. But they said
5 they were in the areas of Roanoke, Lynchburg
6 and other Virginia areas. So that's what we
7 were to understand, why they wanted this
8 language in here.

9 Q And once they told you that,
10 didn't you think to yourself boy, I'd better
11 make sure which markets exactly are being
12 exempted from the launch dates?

13 A Well, as I just stated, they told
14 us they weren't sure exactly where these
15 systems were because they had just recently
16 acquired them.

17 Q Then why isn't there a provision
18 saying, Adelphia markets, you know, without
19 specification, you know, will be launched on
20 a date certain or will be launched once they
21 are rebuilt?

22 This clause says that each system

1 can elect to carry MASN. It doesn't say --
2 there is no restriction in it to ADelphia and
3 I'm just not sure where you are getting the
4 Adelphia understanding from.

5 MR. FREDERICK: Objection, Your
6 Honor, the lawyer is testifying here about the
7 contract. He is not asking any questions of
8 the witness.

9 JUDGE SIPPEL: I'll sustain the
10 objection. I'll sustain the objection. Ask
11 him where do you see any reference to the
12 Adelphia situation as you describe it. Where
13 do you see it in the contract?

14 THE WITNESS: As I stated it is
15 not specifically stated in the contract.

16 JUDGE SIPPEL: All right, I'm
17 sorry, I didn't mean to interrupt you.

18 THE WITNESS: But it was our
19 understanding that is why that language was in
20 there.

21 JUDGE SIPPEL: How did you get
22 that understanding?

1 THE WITNESS: Because David Gluck
2 who was drafting this, he called me and told
3 me that they wanted to strike the word, all,
4 and they wanted to put in this discretion
5 language, sentence, and the reason they wanted
6 to do it was because they were specifically
7 talking about these Adelphia systems that were
8 on low bandwidth that would comprise about
9 150,000 subs but they weren't sure exactly
10 where they were all located, because they had
11 just acquired them. That's my explanation.

12 JUDGE SIPPEL: That's your
13 explanation. But my question is, why wasn't
14 it in the agreement? Did you take a -- were
15 you asked to in any way approve this agreement
16 before it was signed, or give you opinion on
17 it?

18 THE WITNESS: My major
19 participation in the agreement had to do with
20 the pricing of the network, the zones, as well
21 as putting together the zones and the pricing
22 of the zones, and then I was also to take a

1 look at Schedule A, and then that was my major
2 part of the contribution to the term sheet.

3 JUDGE SIPPEL: And before it was
4 signed were you aware of Mr. Gluck's -- as you
5 have testified to it -- that this was the
6 advice Mr. Gluck was giving before this was
7 signed?

8 THE WITNESS: Yes, Mr. Gluck
9 called me --

10 JUDGE SIPPEL: He called you
11 personally?

12 THE WITNESS: He called me
13 personally.

14 JUDGE SIPPEL: All right. And
15 did you ask him any questions about that?

16 THE WITNESS: I said, well why do
17 they want to strike the word all? He said it
18 specifically has to do with the 150,000
19 subscribers that are on these Adelphia systems
20 that they are not quite sure where they are
21 located that are on low bandwidth.

22 JUDGE SIPPEL: Well, yeah, but --

1 I mean there is no reference to that in the
2 contract. The explanation might sound
3 reasonable, but then you say, where does that
4 appear -- you gave me the schedule. You are
5 asking me to take a look at the schedule,
6 basically, I mean to the extent I can approve
7 the schedule. You got all this -- now you
8 have this other factor, it's not an extraneous
9 factor. It actually goes to the heart of the
10 agreement. And there is nothing in there to
11 cover it. I mean it really is not covered in
12 the agreement, is it? I mean do you think
13 it's covered in the agreement?

14 THE WITNESS: Well, the way -- my
15 understanding of the agreement was -- and also
16 what we bargained for -- was that Comcast was
17 going to launch us on all of their systems
18 except for this Adelphia 150,000 I've been
19 referring to, okay. That was the only systems
20 they disclosed that they were not going to
21 launch us on.

22 JUDGE SIPPEL: Well, when was

1 that -- I'm understanding you to say that that
2 was disclosed by Mr. Gluck. Was it disclosed
3 by other people too, or at other times?

4 THE WITNESS: Oh yeah, when we
5 were having the initial discussions with
6 Comcast, Mr. Bond, Mr. Dannenbaum, they
7 explained it to us this way, that this is what
8 was going to happen, that their proposal was,
9 we were going to launch 1.6 million subs in
10 the core market, and that we were going --
11 that we had 750,000 remaining in the rest of
12 the territory, and that we were going to
13 launch approximately 600,000 of those, and
14 later it became a little bit later number like
15 640, and that there was approximately 150,000
16 subscribers as described that were on Adelphia
17 systems that they said had low bandwidth
18 constraints that were in the Roanoke-Lynchburg
19 and other Virginia areas that they said they
20 couldn't launch us on, and that they at that
21 point in time weren't even sure exactly where
22 the systems were located.

1 That's my understanding. That is
2 how I remember it.

3 JUDGE SIPPEL: Well, was there
4 anything to the effect -- I'm very sorry, one
5 more -- what, did anyone come up with -- well,
6 that's all well and good, but when are you --
7 if you upgrade these things, are we going to
8 get them? I mean it's a logical question to
9 ask.

10 THE WITNESS: That's right. It's
11 a very logical question. And so in January of
12 2007 --

13 JUDGE SIPPEL: Answer my
14 question, did anybody come up with anything
15 like that and propose it to Comcast? Not my
16 words now, but was that concept raised by
17 MASN?

18 THE WITNESS: Can you ask that
19 question again? I'm sorry.

20 JUDGE SIPPEL: Yeah. He's saying
21 to you -- you got Mr. Vaughn and Mr.
22 Dannenbaum telling you, when you sit down, and

1 you are talking business, and they say, look,
2 you are going to get 1.6 million launched,
3 750,000 you are going to get, 150,000 you
4 can't get because Adelphia is low band, et
5 cetera. It seems to me that the logical
6 question to ask is, well, what is going to
7 happen? Are they going to be upgraded? It's
8 like saying you are going to get electricity
9 in all of these houses except these ones with
10 gas. Well, maybe you might want to convert to
11 electricity.

12 THE WITNESS: Yeah, well, it was
13 our understanding --

14 JUDGE SIPPEL: Yeah, but how did
15 you get the understanding?

16 THE WITNESS: Well, I'll explain
17 it.

18 JUDGE SIPPEL: I'm sorry.

19 THE WITNESS: Mr. Bond was
20 explaining to us that they weren't going to
21 launch these Adelphia systems because they had
22 low bandwidth constraints, 150,000; they

1 hadn't yet rebuilt them. He said they hadn't
2 yet rebuilt them. We believed that when they
3 would rebuild them, then they would be capable
4 of launching MASN. And the reason we believed
5 that was because they never mentioned to us
6 that they weren't going to. They never
7 mentioned to us there was any low demand on
8 these systems. He said the only reason -- he
9 said at this time we can't launch you on these
10 because they had low bandwidth. He didn't
11 say, at this time we can't launch you on these
12 because there is no demand. He never said
13 that.

14 JUDGE SIPPEL: This is sounding
15 like Alice in Wonderland. You mean they
16 didn't say it, so you assumed -- you assumed
17 that they wouldn't have covered you -- that
18 you would have been entitled to the benefit of
19 these 150,000 if and when there was any
20 rebuilds, if the bandwidth was expanded, you
21 felt -- I'm not saying you personally, but the
22 MASN people in that negotiation session, you

1 walked out assuming that well, we don't have
2 to worry about that, because if they do
3 rebuild it, we are going to get it under the
4 contract. And yet nothing was said about
5 that; nothing was raised in the meeting about
6 that; and nothing shows up in the documents
7 about that. That is, the access to the
8 rebuild.

9 THE WITNESS: We did not have
10 access to the rebuild. We didn't know when
11 they were going to rebuild.

12 JUDGE SIPPEL: That's not my
13 question, but I'll leave it where it is. I
14 don't want to -- I'm finished, Mr. Tollin.

15 MR. TOLLIN: Okay.

16 JUDGE SIPPEL: I'll look the
17 other way.

18 BY MR. TOLLIN:

19 Q So your understandings are not
20 based on the written contract. You
21 understandings are based on oral
22 communications with Comcast, correct?

1 A My understanding is how I stated
2 it, based on the discussions we had with Matt
3 Bond, that --

4 Q Oral understandings, correct?

5 A We understood that they were going
6 to launch MASN on all of their -- all of
7 Comcast systems except for the ADELphia
8 150,000 that were --

9 Q Oral understandings or written?
10 Which one?

11 A My understanding was what I just
12 said.

13 Q Was it based on oral
14 understandings or the written agreement?

15 A It was our understanding that they
16 were going to launch all of the systems, and
17 that when they decided to strike the word, all
18 --

19 MR. TOLLIN: I'm sorry, Your
20 Honor, but I asked --

21 JUDGE SIPPEL: I hear you.

22 MR. TOLLIN: -- whether it was

1 oral or written.

2 JUDGE SIPPEL: All right, now
3 start again from the beginning. You want to
4 ask him what?

5 MR. TOLLIN: Whether his
6 understanding, his Adelphia carve out
7 understanding is based on an oral
8 representation made by Comcast or is it based
9 on the written agreement.

10 JUDGE SIPPEL: Specifically.

11 THE WITNESS: Specifically for
12 the 150,000?

13 JUDGE SIPPEL: Specifically.

14 THE WITNESS: It was an oral
15 understanding. It was my oral understanding
16 that --

17 JUDGE SIPPEL: That's all you
18 need to say.

19 THE WITNESS: Okay.

20 BY MR. TOLLIN:

21 Q Is there anything in the agreement
22 about it?

1 A Is there anything specifically
2 addressing Adelphia?

3 Q That's correct.

4 A I've already stated it's not in
5 there.

6 Q It's not in there? Okay, and are
7 you aware that the agreement has on page nine
8 -- would you turn to page nine of the
9 agreement?

10 A Sure.

11 Q Look at the bottom, binding
12 commitment, definitive agreement. The -- you
13 see where it says no party shall be bound.
14 Could you read that for me?

15 JUDGE SIPPEL: You know, Mr.
16 Tollin, I'm not -- you've got what you want.
17 Move on. That's lawyer stuff. We can figure
18 that one out.

19 BY MR. TOLLIN:

20 Q Just to finish up an earlier
21 series of questions, I just wanted to ask you,
22 can Comcast bid for the rights to the Orioles

1 and Nationals? Do they have that opportunity?

2 A I'm sorry, can you say that one
3 more time?

4 Q Can Comcast bid for the rights to
5 the Orioles and the Nationals, the television
6 rights?

7 A My understanding is that there is
8 a pretty long term contract, but I'm not
9 specific to how long term the contract is
10 between MASN and the two baseball teams.

11 Q Does Comcast have any realistic
12 possibility of ever acquiring the rights to
13 televise the Orioles and the Nats?

14 A I would say that if the --

15 JUDGE SIPPEL: Well, can you
16 answer his --

17 THE WITNESS: -- if the owner --
18 if MASN is continued to be owned by the
19 Orioles and the Nationals, it may be
20 problematic.

21 JUDGE SIPPEL: Well, you've got a
22 reputation that you are testifying -- I mean

1 that's launching your testimony. You've got
2 a lot of years experience in this. I would
3 think that Mr. Tollin would be entitled to
4 your answer.

5 THE WITNESS: Yeah, I think it
6 would be -- if the RSNs continue to be owned
7 by the Orioles and the Nationals, I think it
8 would be pretty difficult for them to get the
9 ability to bid on those rights. I think it'd
10 be pretty difficult.

11 BY MR. TOLLIN:

12 Q Okay, let's go back to -- I'll
13 refer to it as the hunting license for lack of
14 a better term. The -- any other Comcast
15 systems within the MASN territory may carry
16 the service in Comcast's discretion clause.
17 Do you know of any attempts to exercise that
18 clause by MASN?

19 Did MASN try to exercise that
20 clause?

21 A With respect to this agreement?

22 Q With respect to this agreement,

1 with respect to confronting -- with respect to
2 going to the systems and trying to persuade
3 the systems why MASN was a good buy, and why
4 they should carry them?

5 A My understanding is -- I don't
6 know if they did that. What my knowledge is
7 is that the request was made to -- I guess I
8 would term it corporate, Matt Bond or Mr.
9 Dannenbaum.

10 Q I'm asking you, did MASN approach
11 anyone in the field at the system level,
12 either in Roanoke, Harrisburg, or Tri-Cities,
13 to try to encourage them to elect to carry
14 MASN?

15 A I don't know.

16 Q Who would?

17 A David Gluck possibly I would think
18 would be a good individual to ask.

19 Q Okay, when we also look at the
20 agreement, there is a map on it. And I think
21 you are going to have to look at your color
22 map to see the actual names that are on the

1 map.

2 JUDGE SIPPEL: Yes, this is page
3 514 of Exhibit Comcast 5, is that right?

4 MR. TOLLIN: Right.

5 JUDGE SIPPEL: I take that to be
6 a duplicate or a replica of what you have as -
7 - what is that MASN number?

8 MR. TOLLIN: 239.

9 JUDGE SIPPEL: 239, which is in
10 color.

11 BY MR. TOLLIN:

12 Q Now isn't this a map that occurred
13 in just about every version of the term sheet,
14 since MASN started distributing draft term
15 sheet to Comcast?

16 A Yes, it is.

17 Q It is? And can you name some of
18 the areas that are on this map? This is your
19 own map, right?

20 A This is the map that we had in
21 term sheet, yes.

22 Q Is Harrisburg on this map?

1 A I see that Harris -- the DMA
2 Harrisburg, Lancaster, Lebanon and York is on
3 the map.

4 Q Okay, is Tri-Cities, Virginia on
5 this map?

6 A Yes, I see that Tri-Cities is on
7 the map.

8 Q Is Roanoke-Lynchburg on this map?

9 A Yes, I see that Roanoke-Lynchburg
10 is on the map.

11 Q Could you have asked Comcast
12 whether or not all of these areas were being
13 covered by the agreement? These are the major
14 areas, right, within the MASN territory?

15 A These are some of the areas that
16 are within MASN's territories. We have
17 several areas.

18 Q Right, but aren't these names that
19 are listed, aren't these the major areas,
20 Washington, Baltimore, Richmond,
21 Charlottesville?

22 A Right. This shows the DMAs in

1 which our territories are covered, there are
2 several DMAs on the map, I'm not sure how many
3 but there are several.

4 Q Would it have been possible to ask
5 Comcast whether there was going to be carriage
6 to these areas in the agreement?

7 A Well, what --

8 Q A yes or no answer.

9 JUDGE SIPPEL: Well, would it be
10 possible. Anything would have been possible.
11 Could you have?

12 THE WITNESS: Well, what we did
13 it, we said we'd like you to -- the whole
14 basis of the negotiation was that we wanted
15 Comcast to launch us on all of their systems
16 throughout our territory. And our territory
17 covers multiple DMAs.

18 JUDGE SIPPEL: No, that is not
19 the question. Listen to his question. You
20 just have to be persistent, Mr. Tollin, very
21 patient and persistent. Listen to the
22 question.

1 THE WITNESS: Okay.

2 BY MR. TOLLIN:

3 Q Did it ever occur to you to ask
4 Comcast whether or not they were going to be
5 covering the major areas that are listed on
6 this map including Harrisburg, Roanoke and
7 Tri-Cities?

8 A Well, we gave them the figure that
9 you are looking at, and we said we wanted you
10 to launch us everywhere within the territory,
11 which would include, yes, Roanoke, Lynchburg,
12 Tri-Cities, Harrisburg, Washington, D.C.,
13 Baltimore, Salisbury, Northford, all of these
14 regions we wanted us to be launched in. We
15 didn't specifically say to them, are you going
16 to launch us in Harrisburg? Are you going to
17 launch us in Washington, D.C.? Are you going
18 to launch us in Richmond? Are you going to
19 launch us in Roanoke? We didn't specifically
20 say that to them. What we said was, here's
21 our map. It shows all of our regions, and we
22 want you to launch us throughout wherever you

1 have systems.

2 Q Okay. Let's turn back to Schedule

3 A. Now Schedule A has subscriber numbers next

4 to it, right? This is a list again that

5 Comcast prepared where they said they were

6 prepared to launch you, right?

7 A Yes, their subscriber numbers are

8 in Schedule A, yes.

9 Q Okay, and there are subscriber

10 numbers here. When you looked at this list

11 and looked at the subscriber numbers, okay,

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]?

17 A There isn't a system here

18 specifically that says Harrisburg.

19 Q [REDACTED]

20 [REDACTED]?

21 A There -- I'd have to look through

22 it.

1 Q Why don't you?

2 JUDGE SIPPEL: Go off the record,
3 and you can take your time, sir.

4 (Whereupon at 11:13 a.m. the
5 proceeding in the above-entitled matter went
6 off the record to return on the record at
7 11:13 a.m.)

8 JUDGE SIPPEL: All right, back on
9 the record.

10 Do you have a question, Mr.
11 Tollin?

12 BY MR. TOLLIN:

13 Q Do you see any system in
14 Pennsylvania that comes close to [REDACTED]?

15 A I don't see a system in
16 Pennsylvania that has [REDACTED].

17 Q Anything even close?

18 A There are several systems. I
19 don't see anything that's [REDACTED].

20 Q What's the closest?

21 A It looks like there's one in
22 [REDACTED].

1 Q [REDACTED] is the
2 closest.

3 JUDGE SIPPEL: You have to answer
4 yes or no.

5 THE WITNESS: Yes.

6 BY MR. TOLLIN:

7 Q So why did you think Harrisburg
8 was included in this list?

9 A When I took a look at schedule A,
10 I wasn't doing a system-wide. I wasn't doing
11 a system-by-system analysis. What my
12 responsibility was is to take a look at the
13 total number of subscribers they were saying
14 they were going to launch. They said they
15 were going to launch; when I looked at this,
16 approximately 2.25 million subscribers. And
17 they needed to see how that comported with the
18 estimate that I had derived and my estimate
19 was between 2.3 and 2.4.

20 And so when you took the 2.25
21 million and you added the 150 to it, you got
22 about 2.395. So it looked to us and we